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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIEL R. DRAKE, JOHN MCGARVEY,
STEVEN M. MILLER, and ROBERT LEAH

Appeal 2008-3260
Application 09/921,504
Technology Center 2100

Decided:¹ April 20, 2009

Before JAMES D. THOMAS, LANCE LEONARD BARRY, and
THU A. DANG, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 15 and 21. Claims 1-14, 16-20, and 22-28 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We Affirm.

INVENTION

Appellants' invention utilizes Object Oriented Programming (OOP) principles to create a temporary "super image" of a combined to-be-installed (TBI) software application program and software prerequisites as a single package. Such prerequisites mean software that must be installed for the TBI application to function properly or to perform a particular optional function. (Spec. 2, 6, and Fig. 1.)

REPRESENTATIVE CLAIM

Claim 15 further illustrates the invention, and is reproduced below:

15. A system of integrating the installation, on one or more target machines, of software prerequisites with a to-be-installed (TBI) software application, comprising:

means for determining if said TBI software application requires any software prerequisites;

means for obtaining location information for all required software prerequisites;

means for creating a super image comprising the TBI software application wrapped with the location information for said software prerequisites; and

means for distributing said super image to all machines on which said software application is to be installed; wherein:

said means for creating a super image comprises at least:

means for defining an object model representing the integrated software installation;

means for populating the object model with attributes and method to describe the TBI software application and the location information for said software prerequisites; and

means for instantiating one or more objects according to the defined object model, whereby said means for instantiating instantiates an object for the TBI software application and one or more component objects for each of said prerequisites and said populating step populates the instantiated object(s);

and wherein said system further comprises means for using the populated object model to install the TBI software application, said means for using the populated object model further comprises at least:

means for identifying one or more target machines on which the TBI software application is to be installed;

means for downloading the super image to the identified target machines; and

means for performing an installation at each of the identified target machines using the downloaded super image.

PRIOR ART AND EXAMINER'S REJECTION

The Examiner relies upon the following references as evidence of unpatentability:

Shrader	US 5,867,713	Feb. 2, 1999
Parthesarathy	US 6,353,926 B1	Mar. 5, 2002
		(filed Jul. 15, 1998)

Claims 15 and 21 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the Examiner relies upon Shrader in view of Parthesarathy.

Claim Grouping

Based on Appellants' arguments in the Brief (no Reply Brief has been filed), we decide the appeal based on the subject matter of independent claim 15. No arguments are presented to us as to dependent claim 21.

ISSUE

Have Appellants shown that the Examiner erred in finding that the combination of teachings of Shrader and Parthesarathy teach the claimed features of creating a super image, including the location information of it and its delivery to local machines.

FINDINGS OF FACT (FF)

1. Appellants' discussion of the admitted prior art at Specification page 2, line 11 through page 4 line 11, indicates that it was well known in

the art that prior art installation wizards permitted software packages to be loaded from an installation medium such as a diskette or CD-ROM.

Software packages on these mediums were known to include software prerequisites. It was also known that some prerequisites were capable of being retrieved from websites or from separate storage program mediums.

2. The Abstract of Shrader states:

Committing an installation plan object for installing applications in a network. The installation plan object includes an application-in-plan object which represents an application program and a group-in-plan object which represents a group of workstations on which the application program is to be installed. As part of the commit process, the installation plan object is prevalidated by examining its child objects and adding additional child objects to the installation plan object if required, validated by examining data in the installation plan object and its child objects for errors in the data and transformed into data structures usable for a network installation engine which installs applications across a network.

3. As discussed beginning at column 4 of Shrader, the computer illustrated in Figure 1 was known in the art to be a part of a Local Area Network or a Wide Area Network where a local memory included a network installation application package 52 that permitted a client or server workstation relationship depending on whether data was being requested or supplied by the respective workstation. From either a client or server perspective, it appears that the artisan would understand that the network installation package 52 in Figure 1 was the means of implementing the

disclosed invention of Shrader in both types of workstations. An administrator permitted one of the workstations to function as a code server on the local area network and have network installation programs running on it for transfer to respective client workstations. This code server workstation stored “software images” of the programs to be downloaded and correspondingly received by the respective client workstations. These software images were packaged or otherwise wrapped or encapsulated in accordance with object oriented programming principles as discussed beginning at the bottom of column 6 of Shrader.

4. Figure 2 of Shrader shows an install plan object which encapsulates or wraps sub objects including specific application plan objects and group in plan objects consistent with the description of them in finding of fact 2 from the Abstract of Shrader. Further depictions of this are processes contained in the code server container 250 in Figure 3A and the application container 270 in Figure 3B. The processes are implemented through graphical user interfaces in Figures 3C-3D. An object of Shrader’s invention is “to add prerequisite objects or attributes to the installation plan which were originally missing from the plan” (col. 2, lines 31-33). This process of addition is illustrated in Figures 4 through 6 as a prevalidation capability to include a specific flowchart element 530 in Figure 5 of adding new application objects to the existing install plan. Further, a validation functionality is illustrated in Figures 6 through 8 where specific corrective services are added in illustrated element 830 in Figure 8 to include necessary

software updates, fixes and enhancements, the discussion of which occurs beginning at column 12, line 49. The artisan may consider these as prerequisites as well.

5. In addition to Appellants' acknowledgment in the paragraph bridging pages 6 and 7 of the Brief that Parthesarathy teaches location information with respect to a software update channel, the Examiner's specific reliance upon column 6, lines 50 through 57 permits the location and installation capabilities from an individual receiving workstation perspective of software updates illustrated in Figures 2 and 3 of this reference.

ANALYSIS

The Brief does not argue that Shrader and Parthesarathy are not analogous art as argued by the Examiner in the Answer, and it does not argue that these two references are not properly combinable within 35 U.S.C. 103. The alleged absence of certain claimed features from the combination of teachings of both references is reflective of the issue before us.

To the extent Appellants argue at page 7 of Brief that the combination does not teach location information for its software prerequisites and the inclusion of them in a super image, as well as the absence of the creation or formation of such a "super image" per se, are misplaced. Appellants' admitted prior art noted in finding of fact 1 admits that it was known in the

prior art to package a combination of application software and prerequisites for it in the same apparently “super image” medium, where the location information for the prerequisites are included on the medium itself. Thus, any location information would have been self evident to the software package to be installed (TBI).

As noted in finding of fact 5, Appellants even recognized that location information is taught by Parthesarathy since they admit that this reference teaches a software update channel, like the admitted prior art approach of using URL information for such prerequisite software information was known in the art (FF1). This is also verified by Appellants’ characterization of Shrader at page 6 of the Brief where it is stated that “when prerequisites are found to be missing from the target machine, they are served to the target machine based on install operations executed by the network installation engine, not by the target machine.”

From an artisan’s perspective, Shrader’s broad inventive concepts are set forth in finding of fact 2. We presented some details and referenced showings of various Figures of Shrader in findings of fact 3-4 that illustrate the artisan would clearly understand that existing software packages to be installed (TBI) and any prerequisite software packages were included within so-called claimed “super images” within Shrader’s teachings. That Shrader may not utilize per se the term “super image” does not detract from this reference’s teaching value of the concept of object oriented programming

principles being utilized to encapsulate or otherwise wrap certain sub objects that include the TBI software and any prerequisites associated with it.

The Examiner correctly addresses Appellants' allegation at page 7 of the Brief that all operations in Shrader are pushed from a code server by means of a network installation machine and "not by the local machines as claimed herein." The Examiner correctly notes at page 9 of the Answer that there is no corresponding recitation of this feature in independent claim 15 and, moreover, that such is not disclosed either. Not only does the top of page 7 of the Brief indicate that according to the claimed invention "a super image... is delivered to the local machines for installation," it is stated at Specification page 7 lines 3 and 4 that "[o]nce the temporary super image is created, the super image is then distributed to all machines on which the TBI software is to be installed" as illustrated in Figure 1, step 112.

CONCLUSION OF LAW

Appellants have not shown that the Examiner erred in finding that the combination of Shrader and Parthesarathy teach the features of the formation of a "super image" and obtaining or otherwise locating and including such information as a part of this image to the extent recited in independent claim 15 on appeal.

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DECISION

The Examiner's rejection of claims 15 and 21 under 35 U.S.C. § 103 is Affirmed. These claims are unpatentable.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

rwk

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